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Federal Communications Commission

SEP 26 1996

Small Business Market Entry Barriers Forum  
under

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Section 257 of the Telecommunications Act of 1996  
hosted by the Office of General Counsel  
and  
Office of Communications Business Opportunities

GN Docket No. 96-113

September 24, 1996  
1:00 - 5:00 p.m.

DOCKET FILE COPY ORIGINAL

Testimony of Sherwin Grossman, Panelist  
President, Sherjan Broadcasting Co., Inc.  
Licensee of LPTV Station W41BF  
Miami, FL  
(President, Community Broadcasters Association)

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STATEMENT OF SHERWIN GROSSMAN, PRESIDENT  
COMMUNITY BROADCASTERS ASSOCIATION  
BEFORE THE FEDERAL COMMUNICATIONS COMMISSION'S  
SMALL BUSINESS INQUIRY PANEL  
SEPTEMBER 24, 1996

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Thank you for the opportunity to be here today. The Community Broadcasters Association represents the low power television broadcasting industry -- the best example of a fast-growing, public service-oriented small business that this Commission regulates today. There are more licensed low power stations than full power TV stations, providing work for thousands of people and representing investments of hundreds of millions of dollars.

But we don't get a fraction of the problem-solving attention that the full power stations get -- and we need some.

The Commission's *Notice of Inquiry* in General Docket 96-113 recognizes that small businesses are able to serve narrower niche markets that may not be easily or profitably served by large corporations. That's exactly what we do. LPTV stations fulfill all the small business criteria, and their activities promote all the government's goals:

1. They're independently owned and operated. Operation and management by equity owners is a hallmark of the LPTV business.
2. Their annual receipts are modest. They would throw the biggest party you ever saw if any of them reached the \$10.5 million in your small business definition.
3. They strongly contribute to the diversity of the nation's media voices. They serve smaller geographic communities that have no other local TV, and they serve minority and other specialized audiences in larger cities.
4. LPTV stations actively create new jobs, including positions at the important entry level. That's a lot different from what's happening with all the mega-mergers. I couldn't help noticing the Jacor-Citicasters decision a week or so ago, when the TV-radio cross-ownership rule was waived to approve a giant merger. A lot of the public interest benefit the Commission mentioned was cost savings from cutting staff positions. I don't see that as a benefit. And the families which lost their income sure don't.
5. And this one's important -- LPTV stations, because of their secondary status, can't obtain conventional bank financing. I know. I was a banker and would have been fired if I had loaned money to these stations. These stations are built with the sweat and the dollars of their owners. They're the same kind of people who drove the covered wagons to open up the West.

I'll tell you why we need the Commission's attention. We're happy to fight for a spot in the marketplace on our own, but the Commission is threatening to kill us in the digital TV proceeding, because it won't take our stations into account in making full power digital allotments. It looks to us like the estimates of displaced LPTV stations in the *Sixth Further Notice* in Docket 87-268 were low. We can't fight in the marketplace if we're dead.

The Commission is in a big hurry to chop off Channels 60-69 and auction them off -- maybe Channel 2-6 and 52-59 too. It's nice for the government to get revenue, but when you walk around

wielding a sharp knife, you have to be careful where you poke it. LPTV is getting stabbed in the gut.

I don't want to sound unappreciative of the concern about LPTV expressed in the *Sixth Further Notice*. It's the first time the Commission has really recognized the importance of LPTV in a major rule making. But I don't know how many thousands of public tax dollars were spent trying to figure out how to move full power TV stations to digital, and you're telling us little guys to figure out a way to save ourselves. We pay taxes, too, and you should be actively working with us on solutions for us.

And then there's cable leased access. A lot of LPTV stations don't have cable must-carry rights, so we try to lease channels. Prices under the current rules are ridiculous. While full power stations are carried for free, and aren't even allowed by law to pay, LPTV stations are asked to pay usurious amounts. The Chairman himself said the prices were "indefensible." The Commission has proposed some rules that are better, but it's sitting on them. The leased access law was passed in 1992; it's 1996 now, and we're still starving without cable carriage. The delay has been so long that two tries have been made to get the Court of Appeals to order the Commission to act. Meanwhile, the intent of Congress to get some independent voices on cable remains unfulfilled.

We're going to ask to change the rule that limits our transmitter power to one kilowatt. You should regulate ERP instead, the way you regulate most other services. That will let us use smaller antennas and fill in gaps in our existing service areas, with no increased interference. We hope the Commission will act quickly on that request.

We need more access to Commission decision-makers. There are some very kind and sympathetic senior people at this agency, and we're grateful for the time and attention they give us. But it takes me a dozen calls to get an appointment with a Commissioner -- if I can get one at all. Does Ted Turner call a dozen times? While I'm happy to be here speaking today, the FCC turned down the CBA for its political and spectrum *en banc* hearings, when it let the NAB speak, even though there are more low power than full power TV stations, and a lot of us give a lot of air time for public service. The NAB won't even allow us to join as regular members, so they certainly don't speak for us.

We're studying not only Section 257 of the Telecommunications Act of 1996 but also the Small Business Growth and Fairness Act of 1996, Public Law 104-121, which became law on March 29, 1996. Congress has put it on the line and told the Commission that it must pay attention to small business and not erect barriers to their growth.

The Commission is very proud of its PCS auctions, where so-called "small businesses" bid BILLIONS of dollars for spectrum -- a lot of it foreign money. How can you call a company that can bid \$4 billion dollars "small?"

The Commission needs to change its attitude and focus on real small businesses, not try to strangle the only service that has more women and minorities than any other telecommunications business. Auction dollars for the Treasury are nice, but that's not what Section 257 and the Small Business Growth and Fairness Act are about. They're about us. We're here to stay, and we aren't going to roll over and die. The law says we don't have to.